

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLAN CORP. INC.,

Plaintiff,

-vs-

DONGKWANG INTERNATIONAL CO., LTD.,

Defendant.

COMPLAINT

Case Number:
09-CIV-00414(LAP)
ECF case

JURY TRIAL DEMANDED

Plaintiff, ELLAN CORP. INC., for its Complaint against the defendant, DONGKWANG INTERNATIONAL CO., LTD., alleges:

PARTIES

1. Plaintiff, ELLAN CORP. INC., is a Pennsylvania corporation, with its principal place of business located at 2700 Germantown Avenue, Philadelphia, PA 19133.

2. Defendant, DONGKWANG INTERNATIONAL CO., LTD., is a Korean corporation, with its principal place of business located at 459-14 Kasan-dong, Geumchon-gu, Seoul, South Korea.

JURISDICTION and VENUE

3. Pursuant to the terms of their written agreement, both the plaintiff and the defendant consented to the jurisdiction and venue of this Court.

4. This Court has diversity jurisdiction of the instant action pursuant to 28 U.S.C. § 1332(a)(2), because the plaintiff is a citizen of one of the States, namely, the Commonwealth of Pennsylvania, and the defendant is a citizen of a foreign state, namely, South Korea. Furthermore, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue is proper in the Southern District of New York, pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events giving rise to the claims alleged herein occurred in this District, and because this is the District in which the defendant consented to being subject to the personal jurisdiction of this Court.

FIRST CAUSE OF ACTION

(Breach of Contract)

6. On August 8, 2008, in the City of New York, State of New York, plaintiff and defendant entered into a written Distributorship Agreement (hereinafter “the Agreement”), pursuant to which the plaintiff agreed to sell to the defendant, and the defendant agreed to purchase from the plaintiff, certain specified goods, based upon agreed upon prices, delivery terms, and schedules of purchases.

7. At all times relevant herein, plaintiff has been ready, willing, and able to comply with all of its obligations pursuant to the Agreement.

8. On August 9, 2008, defendant, through its legal counsel, advised plaintiff that it would not comply with its obligations pursuant to the Agreement.

9. Since giving said notice of breach to the plaintiff, defendant has repeated refused to cure its breach of the Agreement, and to comply with its obligations thereunder, despite repeated demands therefor by the plaintiff.

10. The failure and refusal of the defendant to carry out its obligations pursuant to the Agreement constitutes a breach of contract.

11. As a result of the defendant’s breach of contract, plaintiff has sustained, or will necessarily sustain, actual damages in excess of \$2,000,000.

12. Furthermore, pursuant to paragraph 8.5 of the Agreement, “when and if [defendant] DONGKWANG breaches this responsibility [to comply with its obligations under

the Agreement], DONGKWANG shall reimburse the quadruple of the price of the total quantity [of the goods to be purchased by the defendant pursuant to the terms of the Agreement].”

13. In addition, defendant also breached its obligation to deposit with the plaintiff, as a security deposit for its good faith performance of the Agreement, the sum of \$300,000.

14. By virtue of the foregoing, plaintiff is entitled to a judgment against the defendant in an amount to be determined by the Court, but believed to be in excess of \$8,000,000.

WHEREFORE, plaintiff demands judgment against the defendant for its damages herein, plus interest, together with the costs and disbursements of this action.

Dated: January 15, 2009

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